



DAN MORALES
ATTORNEY GENERAL

Office of the Attorney General
State of Texas

August 15, 1991

Mr. Roger Lee
Gibson and Hotchkiss
912 City National Building
807 8th Street
Wichita Falls, Texas 76301

OR91-373

Dear Mr. Lee:

On behalf of Petrolia Independent School District, you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, article 6252-17a, V.T.C.S. Your request was assigned ID# 12854.

The Petrolia Independent School District (the district) received an open records request for

- 1) The notice and minutes of the special or emergency school board meeting conducted on 18 June 1991.
- 2) All letters from the Texas Attorney General regarding that agency's investigation and/or request for information pertaining to the construction of the Petrolia school baseball field.
- 3) All letters the Petrolia School District/Board/Administration has sent to the Attorney General in response to that agency's investigation of the Petrolia School baseball field.

You contend that the requested information is excepted by sections 3(a)(3) and 3(a)(7) of the Open Records Act.

Although the attorney general will not ordinarily raise an exception that the governmental body has failed to claim, this office will raise section 3(a)(1) because the release of confidential information could impair the rights of third parties and because its improper release constitutes a misdemeanor. *See* V.T.C.S. art. 6252-17a, § 10(f); *see also* Open Records Decision Nos. 455 (1987) at 3; 325 (1982). Section 3(a)(1) of the act protects "information deemed confidential by law, either

Constitutional, statutory, or by judicial decision." Certified agendas of school board executive sessions must be kept confidential pursuant to section 2A(c) of the Open Meetings Act; consequently the district must withhold this information.

On the other hand, this office held in Open Records Decision No. 221 (1979) that "official records of the public proceedings of a governmental body are among the most open of records." The minutes at issue come under the protection of none of the exceptions you raise. The district must disclose these records.

To secure the protection of section 3(a)(3), a governmental body must first demonstrate that a judicial or quasi-judicial proceeding is pending or reasonably anticipated. Open Records Decision Nos. 452 (1986); 360 (1983). The mere chance of litigation will not trigger the 3(a)(3) exception. Open Records Decision Nos. 331, 328 (1982) (copies enclosed). Further, the governmental body's attorney must show that the requested material relates to the litigation. Open Records Decision No. 551 (1990).

Although you assert that section 3(a)(3), the litigation exception, protects the remaining documents, you have failed to demonstrate how this exception applies to the requested information despite this office's request that you do so. Further, an assistant attorney general conducting an investigation of the circumstances surrounding the building of the baseball field informs this office that no litigation regarding this matter is planned at this time. Because you have not shown that the requested material meets the criteria for this exception, the district may not withhold this information pursuant to section 3(a)(3).

Finally, you contend that the requested information comes under the protection of the attorney-client privilege. *See* V.T.C.S. art. 6252-17a, § 3(a)(7). It is unclear to this office your basis for claiming this exception when there exists no attorney-client relationship between the attorney general and the district. We further note that to the extent that any privileged communications between you and the district are reflected in correspondence to the attorney general, the privileged nature of those communications would now be waived. The documents at issue thus contain no information protected by section 3(a)(7) of the act, and with the exception of the certified agenda of executive sessions, the district must release the requested information in its entirety.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with

a published open records decision. If you have questions about this ruling, please refer to OR91-373.

Yours very truly,



Celeste A. Baker
Assistant Attorney General
Opinion Committee

CAB/RWP/lb

Ref.: ID# 12854
ID# 12955
ID# 13072

Enclosures: Open Records Decision Nos. 331, 328

cc: John W. Swenson, Jr.
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